International Longshoremen's Association, Local 1414, AFL-CIO *and* Occidental Chemical Company

International Longshoremen's Association, South Atlantic and Gulf Coast District, AFL-CIO *and* Occidental Chemical Company

International Longshoremen's Association, Local 1423, AFL-CIO *and* Occidental Chemical Company

International Longshoremen's Association, AFL-CIO *and* Occidental Chemical Company. Cases 10-CC-1141-1, 10-CC-1141-2, 10-CC-1141-3, and 10-CC-1141-4

April 5, 1982

DECISION AND ORDER

This case, like its companion proceeding, *International Longshoremen's Association, AFL-CIO, and Local 799, International Longshoremen's Association, AFL-CIO (Allied International, Inc.)*, 257 NLRB 1075 (1981), raises the question of whether the National Labor Relations Board can assert jurisdiction over conduct alleged to violate Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, where that conduct is secondary to a primary dispute between an American union and a foreign nation.

As in *Allied, supra*, the Administrative Law Judge found that jurisdiction does not lie.[1] We disagree. For substantially the same reasons set forth in our decision in *Allied*, we assert jurisdiction and find that Respondents[2] have engaged in conduct classically subject to and violative of Section 8(b)(4). We find no fault, however, with the Administrative Law Judge's findings of fact and credibility resolutions, which we adopt.[3]

The essential facts are as follows:

The Charging Party, Occidental Chemical Company (Occidental), imports urea, potash, and anhydrous ammonia from the USSR pursuant to a long-term trade agreement. Ships chartered by Occidental customarily discharge ammonia purchased in the Soviet Union in the port of Savannah, Georgia, and Russian potash in the port of Brunswick, Georgia.

On January 9, 1980,[4] 2 weeks after the USSR invaded Afghanistan,[5] ILA International Vice President Thomas W. Gleason made the following public statement:

> In response to overwhelming demands by the rank and file members of the Union, the leadership of ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed.
>
> This order is effective across the board on all vessels and all cargoes. Grain and other foods as well as high valued general freight. However, any Russian ship now in process of loading or discharging at a waterfront will be worked until completion.
>
> The reason for this action should be apparent in light of international events that have affected relations between the U.S. and Soviet Union.
>
> However, the decision by the Union was made necessary by the demands of the workers.
>
> It is their will to refuse to work Russian vessels and Russian cargoes under present conditions in the world.
>
> People are upset and they refuse to continue the business as usual policy as long as the Russians insist on being international bully boys. It is a decision in which the Union leadership concurs.

On January 10, J. H. Raspberry, president of ILA South Atlantic and Gulf Coast District, sent a telegram to all ILA locals under his jurisdiction, including Respondent Locals. The telegram contained the body of Gleason's statement with the appended notation from Raspberry that "I concur with President Gleason's position and advise you to act accordingly."

Two vessels carrying Russian cargo for Occidental were scheduled to arrive in Savannah and Brunswick in the second week of February. The

[1] On March 16, 1981, Administrative Law Judge Bernard Ries issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party filed exceptions and supporting briefs, and Respondents filed consolidated exceptions and a brief in support of the exceptions and the Administrative Law Judge's determination.

[2] Respondents are International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, South Atlantic and Gulf Coast District, AFL-CIO; and International Longshoremen's Association, Locals 1414 and 1423, AFL-CIO. They are collectively referred to as the International Longshoremen's Association (ILA).

[3] Respondents have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[4] All dates are in 1980 unless otherwise indicated.

[5] We take administrative notice that, because of the invasion of Afghanistan by the USSR, President Carter imposed an embargo on exports to the USSR in early January. The President exempted from the embargo the outstanding amount of unshipped grain committed under art. I of the 1975 agreement between the United States and the Soviet Union on the Supply of Grain, 26 U.S.T. 2972; T.I.A.S. No. 8206. The President's statement and directives concerning the embargo issued under the Export Administration Act, 50 U.S.C. App. § 2401, *et seq.*, are contained in the "Weekly Compilation of Presidential Documents," vol. 16, No. 2, Monday, January 14, 1980, pp. 25-27, 32-33.

Antilla Bay, a foreign flagship carrying ammonia, was due to arrive in Savannah on February 12.

Occidental employs Stevens Shipping and Terminaling Co. (Stevens), an American corporation, as ships' agent for receiving ammonia in Savannah. Stevens in turn employs M. J. Hogan Co. (Hogan), an American corporation, to moor the ships to the dock and Atlantic Towing to provide tugboat service. Stevens and Hogan are parties to a collective-bargaining agreement with Local 1414. That agreement contains a no-strike clause[6] and establishes a hiring hall system. Hogan has been assigned a regular crew by the hiring hall, so it does not routinely use the hiring hall unless it needs extra men.

Prior to February 12, the scheduled date of arrival of the *Antilla Bay*, William Vance, Occidental's director of marketing and logistics, had been told that the Georgia Port Authority would not allow Occidental to bring any vessel carrying Russian cargo into the Port of Savannah without complete agreement of the ILA and the other unions. As a result, Vance contacted Walter Caceres of Stevens, who indicated Atlantic Towing wanted the same assurances from the unions before providing any tugboat service. Vance asked Caceres to make the necessary calls for labor to handle the vessel. Thereafter, Caceres told Vance the ILA would not handle the cargo of the *Antilla Bay*. Vance then called Reverend Elijah Jackson, president of Local 1414. Jackson confirmed Vance's information that the Local would not handle the cargo on the *Antilla Bay*. Jackson added that "this was the position of the nation—of the Union nationwide." Until they received guidance different than that, he was going to "proceed not to handle vessels." On the basis of this information Vance diverted the *Antilla Bay* to a west coast port for its scheduled arrival.

In Savannah, an automated process is used to discharge ammonia after Hogan's ILA crew moors the ship to the dock. The crew for an ammonia ship consists of six longshoremen and two of Hogan's supervisors. M. J. Hogan testified that he does not have enough supervisors to tie up a ship without other help. He further testified that he does not use non-ILA labor to tie up ships as a matter of practice and due to his understanding of the contract.

Sometime between Gleason's order in early January and early March when the boycott was enjoined, Hogan contacted Local 1414 Vice President Chester Durham about working Russian cargo (but apparently not on the *Antilla Bay*) and Durham told Hogan that the ILA would not work Russian cargoes or ships but that Hogan could use his supervisors.

The *Rosedale*, a foreign flag vessel chartered by Occidental, was scheduled to arrive in Brunswick on February 8 with a cargo of potash. On February 1, Occidental asked Royster Co. (Royster), an American corporation which supervised the receipt of cargo for Occidental, and Marine Port Terminal, Inc. (Marine), an American corporation which provides stevedoring services for Royster at Brunswick, to prepare for the unloading of the *Rosedale*. Marine has an agreement with Local 1423 which is identical in its terms to the Savannah agreement. In order to obtain the 15 to 20 longshoremen necessary to moor and unload the *Rosedale*, John Stubbs, president of Marine, contacted Local 1423 President Thomas Holland. Holland ultimately told Stubbs that the ILA would not handle the *Rosedale*. Thereafter, Occidental official John Harold set up a meeting with Holland. This meeting took place on February 11, the same day the *Rosedale* arrived in the port. Holland, Stubbs, Harold, and Frank Screven, vice president of Local 1423, attended the meeting. When Harold asked Holland if the ILA would provide the labor to unload the *Rosedale*, Holland told Harold that his position had not changed and that his Local could use the work but, unless he had instructions from his superiors, he was not going to work the cargo.

From February 11 until March 9, the *Rosedale* remained at anchor off the Port of Brunswick. On March 9, pursuant to an injunction issued by the U.S. district court in Savannah, members of Local 1423 discharged the cargo.

For the reasons set forth in his Decision in Allied, supra, the Administrative Law Judge dismissed the complaint in this case, concluding that the National Labor Relations Board lacked jurisdiction. On the basis of our analysis in *Allied*, we find that the Board can assert jurisdiction and we do so. We further find that Respondents violated Section 8(b)(4) of the Act.

In *Allied*, we held that our assertion of jurisdiction is authorized by the clear language of the Act which explicitly encompasses foreign commerce, the legislative purpose of the secondary boycott provisions, and the congressional intent to formulate a national labor policy. We noted that the Supreme Court found implied limitations on our foreign commerce jurisdiction in a number of decisions involving foreign entities.[7] However, we

[6] Sec. 15(A)(1) of the collective-bargaining agreement provides, in part, "[T]he Union agrees there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interference, stoppage, total or partial, of the Employer's operation for any cause whatsoever."

[7] *Benz et al.* v. *Compania Naviera Hidalgo, S. A.*, 353 U.S. 138 (1957); *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10

Continued

found nothing in those decisions to suggest that the involvement of a foreign nation deprives the Board of jurisdiction where American neutral employers are affected by purely secondary conduct normally proscribed by Section 8(b)(4). The same reasoning applies here. As in *Allied*, the ILA's conduct involves action by American employees working for American employers which has caused serious injury to neutral parties.

Occidental, Stevens, Hogan, the *Antilla Bay*, Royster, Marine, and the *Rosedale* have nothing to do with the dispute between the ILA and the USSR. Their neutrality is beyond question. Yet, Respondents have brought direct economic pressure to bear on each of these parties resulting in a substantial interference with their business and contractual obligations. Respondents actions are classically subject to the proscriptions of Section 8(b)(4). That two of the neutrals affected, the *Antilla Bay* and the *Rosedale*, are foreign flagships does not mandate a different result. They are still "persons" entitled to protection as proscribed targets of secondary activity prohibited by Section 8(b)(4). In this regard, we note that the 1959 amendments to Section 8(b)(4) broadened its protections by inserting "any person engaged in commerce" in place of "any employer." One purpose of this change was to bring within the section activities directed against entities specifically excluded from the Act's definition of "employer" and thus otherwise beyond the protection of the Act.[8] Since this amended language was enacted, the Board has found various entities which are not "employers" within the meaning of the Act to be "persons" for the purposes of Section 8(b)(4),[9] and therefore entitled to the protection of its proscriptions. For example, in circumstances virtually identical to those presently before us, the Board concluded that a Bermuda corporation was a person within the meaning of the Act. *Local 1355, International Longshoremen's Association (Ocean Shipping Service, Ltd.)*, 146 NLRB 723 (1964), enforcement denied on other grounds 332 F.2d 992 (4th Cir. 1964). There, the ILA had refused to load ships engaged in Cuban trade during the 1962 Cuban missile crisis. As here, there was neither picketing nor any other interferences with ship operations. The Board held that the ILA's domestic secondary conduct was subject to the Board's jurisdiction and violative of Section 8(b)(4).

Here, both the *Antilla Bay* and the *Rosedale* were chartered by Occidental.[10] They carried cargoes owned by Occidental for delivery to parties in the United States. Accordingly, since they have no relation to the primary dispute between the ILA and the USSR regarding the invasion of Afghanistan, it follows that these foreign flagships are neutral parties protected by Section 8(b)(4).

Further, the presence of foreign flagships does not invoke the limitation on our commerce jurisdiction delineated by the Supreme Court in *Windward* and *Mobile*. In the line of decisions which culminated in *Windward* and *Mobile*, the Court's major concern was that assertion of the Board's jurisdiction would cause interference with foreign maritime operations, principles of comity and international trade, and international relations.

In *Windward*, the Court barred the Board from asserting jurisdiction over primary activity directed against a foreign flagship. *Mobile* dealt with the secondary effects of the same primary activity which had been involved in *Windward*. The Court found that jurisdiction did not lie in either instance. The combined holdings of these cases are that primary conduct which interferes with foreign maritime operations is not subject to the Board's jurisdiction, regardless of whether the charging party is a primary or secondary employer.[11] Thus, in *Mobile*, the Supreme Court stressed the inextricable intertwining of the primary and secondary effects of the same primary conduct and found that the Board could not assert jurisdiction over the secondary conduct in those circumstances.

Here, however, as in *Allied*, the conduct involved is purely secondary. The primary dispute is between Respondents and the USSR over matters of foreign policy. No primary activity has occurred concerning that dispute. Instead, Respondents' action is wholly directed against parties having no involvement in or power to directly affect the primary dispute. Indeed, their only connection with the dispute is extremely remote: they handle Russian cargo among many other types of cargo. Thus, in contrast to *Windward* and *Mobile*, the activity

(1963); *Incres Steamship Co., Ltd.* v. *International Maritime Workers Union, et al.*, 372 U.S. 24 (1963); *International Longshoremen's Association, Local 1416, AFL-CIO* v. *Ariadne Shipping Co., Ltd., et al.*, 397 U.S. 195 (1970); *Windward Shipping (London) Ltd. et al.* v. *American Radio Association, AFL-CIO, et al.*, 415 U.S. 104 (1974); and *American Radio Association, AFL-CIO, et al.* v. *Mobile Steamship Assn., Inc., et al.*, 419 U.S. 214 (1974).

[8] See, e.g., II Leg. Hist. 1470-71 (LMRDA, 1959).

[9] See *Local No. 16, International Longshoremen and Warehousemen's Union (City of Juneau)*, 176 NLRB 889 (1969), and *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Mansfield Contracting Corporation)*, 205 NLRB 559 (1973), where the Board found state and municipal political subdivisions to be persons. See also *Plumbers, Steamfitters, Refrigeration, Petroleum Fitters, and Apprentices of Local 298, A.F. of L., et al.* v. *County of Door, et al.*, 359 U.S. 354 (1959), which was cited in *American Radio Assn., AFL-CIO, et al.* v. *Mobile Steamship Assn., Inc., et al., supra* at 227, for the proposition "that an entity which is not within the Act's definition of 'employer' may nonetheless be a 'person' for purposes of protection against secondary boycotts."

[10] The testimony as to the *Antilla Bay* was that it was either an Occidental vessel or "chartered by Occidental."

[11] See *Allied*, 257 NLRB 1075, 1080.

here is not intertwined with primary activity which would be beyond the Board's jurisdiction. The secondary activity is predominantly directed against American entities, and that directed against foreign entities focuses on foreign flagships having no relationship to the primary dispute between Respondents and the USSR. In this sense, the case before us is nearly the mirror image of *Mobile*. There, the impact of the secondary conduct on American neutral parties was identical to that of the primary activity directed against the foreign ship. Here, there is no primary conduct, and the impact of the secondary conduct on the foreign flagships is identical to that on the American secondary employers.

Moreover, the activity does not affect the internal affairs of a foreign ship so as to implicate international maritime trade policies, international affairs, or principles of comity. No predictable response of the *Antilla Bay* and the *Rosedale* would have a "most significant and far-reaching effect on the maritime operations of these ships throughout the world" such as *Windward* and *Mobile* found to deprive us of jurisdiction. Rather than intruding into the maritime operations of these ships, assertion of jurisdiction over this secondary dispute protects their right to do business in American ports with American corporations, free from the economic pressures exerted by an American union engaged in a dispute to which these ships are strangers.

The conduct involved in this case is not materially different from that in *Allied*. It is precisely the type of conduct prohibited by Section 8(b)(4)(i) and (ii)(B) of the Act. Close examination of the ILA's defenses compels the finding of a violation:

First, as in *Allied*, Respondents contend that they did not induce their members to boycott Russian goods. Rejecting this contention, the Administrative Law Judge found Gleason's January 9 statement and Raspberry's attached note to be a binding order from the ILA leadership to the rank-and-file membership. We agree for the following reasons: In Savannah, Local 1414 President Jackson told Occidental's representative that, until he received different guidance, the Local was not going to handle vessels bearing Soviet cargoes and that the Local was "not going to do anything that we feel out of proportion with the ILA." Jackson testified at the hearing that he "received this [Gleason's statement] as some kind of formal guideline of our Local being in a state of God." Similarly, in Brunswick, Local 1423 President Holland told the Occidental representative that "his local could use the work but unless he had instructions from his superiors, he was not going to work the cargo." Holland testified that the boycott issue was not put to a vote and that he could not recall any occasions when the Local had disagreed with positions taken by the International. Accordingly, we conclude that Respondents engaged in, and induced and encouraged ILA members employed by Stevens, Hogan, and Marine to engage in, a refusal in the course of their employment to handle Occidental's shipment of ammonia and potash from the USSR.

Second, Respondents argue that their only object in refusing to handle Russian cargo was to demonstrate their disapproval of Soviet foreign policy and their unwillingness to contribute in any way to the Soviet cause. As we concluded in *Allied*, Respondents are responsible for the foreseeable consequences of this conduct.[12] Those findings apply with equal force in this case.

The record establishes that, pursuant to a bilateral trade agreement with the USSR, Occidental imports ammonia through the Port of Savannah and potash through the Port of Brunswick. To handle these imports, Occidental has contracted with ships, ships' agents, and mooring and stevedoring companies. Thus, the refusal to handle the Russian ammonia and potash obviously could be expected to threaten the above parties with a breach of those contractual relationships and substantial economic loss.

As the Administrative Law Judge concluded, it was equally foreseeable that no non-ILA labor could be employed by the neutral parties in the face of the ILA boycott. The Administrative Law Judge found:

> They made no effort to do so, I assume, not only because they did not wish to offend ILA, but also because the *in terrorem* effect of President Gleason's directive made it quite conceivable that a ship could come into port and, as the Georgia Port Authority saw it, not make its way back out. Because the Port Authority would not let Occidental bring the ships into port while this Damoclean sword was suspended, it was understandable that Occidental would not have urged Hogan and Marine to find some non-ILA men to do the jobs. [ALJD, sec. II, "Findings of Fact."]

In these circumstances, as in *Allied*, Respondents had every reason to foresee that implementation of the boycott meant that the ammonia and potash would not move in any ports encompassed by the boycott, and that Occidental would be forced to cease purchasing ammonia and potash for delivery to ports affected by the boycott. Similarly, Re-

[12] See *Allied*, discussion of *N.L.R.B.* v. *Retail Store Employees Union, Local 1001, Retail Clerks International Assn., AFL–CIO* [*Safeco Title Insurance Co.*], 447 U.S. 607 (1980) at 257 NLRB 1075, 1083.

spondents must have foreseen that neutral employers such as Stevens, Hogan, Royster, and Marine would be forced to cease doing business with Occidental and each other. Thus, under the same analysis as set forth in *Allied*, Respondents induced the boycott with an object of forcing the business entities involved to cease business operations among themselves and to cease handling goods emanating from the USSR.

Based on the above, we find that, within the meaning of Section 8(b)(4), Respondents have engaged in, and induced and encouraged their members to engage in, refusals in the course of their employment by Hogan and Marine to process or otherwise handle Soviet cargoes which are owned by Occidental and destined for Savannah, Brunswick, and other ports in the United States. In addition, Respondents have threatened, coerced, and restrained Stevens, Hogan, and the *Antilla Bay* in Savannah, and Royster, Marine, and the *Rosedale* in Brunswick, by refusing to refer Respondent's members for unloading cargoes emanating in the USSR. An object of Respondents' above-described conduct in Savannah was (1) to force or require Hogan to cease doing business with Stevens, Occidental, and the *Antilla Bay*; (2) to force or require Stevens to cease doing business with Occidental, and (3) to force or require Stevens, Occidental, and Hogan to cease using, selling, handling, transporting, or otherwise dealing in the products of the USSR, each in violation of Section 8(b)(4)(i) and (ii)(B) of the Act. An object of Respondents' above-described conduct in Brunswick was (1) to force or require Marine to cease doing business with Royster, Occidental, and the *Rosedale*; (2) to force or require Royster to cease doing business with Occidental; and (3) to force or require Marine, Royster, and Occidental to cease using, selling, handling, transporting, or otherwise dealing in the products of the USSR, each in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

Having found that Respondents have engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action deemed necessary to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Occidental Chemical Company (Occidental), Stevens Shipping and Terminaling Co. (Stevens), M. J. Hogan Co. (Hogan), Royster Co. (Royster), and Marine Port Terminals, Inc. (Marine), are employers engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The *Antilla Bay* and the *Rosedale* are persons within the meaning of the Act.

3. International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, South Atlantic and Gulf Coast District, AFL-CIO; and International Longshoremen's Association, Locals 1414 and 1423, AFL-CIO, collectively referred to here as Respondents, and each of them, are labor organizations within the meaning of Section 2(5) of the Act.

4. By inducing and encouraging employees of Hogan, members of Respondents, not to handle and unload goods owned by Occidental and transported by the *Antilla Bay*, and by threatening, coercing, and restraining Occidental, Stevens, Hogan, and the *Antilla Bay* to cease doing business with each other, Respondents engaged in unfair labor practices affecting commerce in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

5. By inducing and encouraging employees of Marine, members of Respondents, not to handle and unload goods owned by Occidental and transported by the *Rosedale*, and by threatening, coercing, and restraining Occidental, Royster, Marine, and the *Rosedale* to cease doing business with each other, Respondents engaged in unfair labor practices affecting commerce in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, International Longshoremen's Association, AFL-CIO; International Longshoremen's Association, South Atlantic and Gulf Coast District, AFL-CIO; and International Longshoremen's Association, Locals 1414 and 1423, AFL-CIO, individually and collectively, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by Hogan, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to process, transport, load, unload, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to require Hogan, Occidental, Stevens, and the *Antilla Bay*, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force Occidental, Stevens, Hogan, and the *Antilla Bay* to cease doing business with each other.

(b) Inducing or encouraging individuals employed by Marine, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to process, transport, load, unload, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to require Marine, Occidental, Royster, and the *Rosedale*, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force Occidental, Royster, Marine, and the *Rosedale* to cease doing business with each other.

(c) Threatening, coercing, or restraining Occidental, Stevens, Hogan, and the *Antilla Bay*, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to require the above-named persons, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force Occidental, Stevens, Hogan, and the *Antilla Bay* to cease doing business with each other.

(d) Threatening, coercing, or restraining Occidental, Royster, Marine, and the *Rosedale*, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to require the above-named persons, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force Occidental, Royster, Marine, and the *Rosedale* to cease doing business with each other.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at their business offices and meeting halls copies of the attached appropriate notices marked "Appendix A" and "Appendix B."[13] Copies of said notices, on forms provided by the Regional Director for Region 10, after being duly signed by Respondents' representatives, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to their members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Promptly after receipt of copies of said notices from said Regional Director, return signed copies for posting by Occidental, Stevens, Hogan, Royster, Marine, the *Antilla Bay*, and the *Rosedale*, those companies willing, at all places where notices to their respective employees are customarily posted.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

MEMBER JENKINS, dissenting:

The Administrative Law Judge dismissed the complaint for want of jurisdiction on the same analysis he employed in dismissing the complaint in *International Longshoremen's Association, AFL–CIO, and Local 799, International Longshoremen's Association, AFL–CIO (Allied International, Inc.)*, 257 NLRB 1075 (1981). In accordance with my dissent in that case, I would affirm the Administrative Law Judge here. Since the Administrative Law Judge's rationale provides sufficient ground for dismissing the instant complaint, I find it unnecessary to consider the significance of the fact that, here, two of the neutrals directly affected by the boycott are foreign flagships. Cf. my dissent in *Local No. 16, International Longshoremen and Warehousemen's Union (City of Juneau)*, 176 NLRB 889 (1969).

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT induce or encourage individuals employed by M. J. Hogan Co., or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to process, transport, load, unload, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where the object thereof is to require Stevens Shipping and Terminaling Co., Occidental Chemical Company, M. J. Hogan Co., the *Antilla Bay*, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force Occidental Chemical Company, Stevens Shipping and Terminaling Co., M. J. Hogan Co., and the *Antilla Bay* to cease doing business with each other.

WE WILL NOT threaten, coerce, or restrain Occidental Chemical Company, Stevens Shipping and Terminaling Co., M. J. Hogan Co., or the *Antilla Bay*, or any other person, to

[13] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force Occidental Chemical Company, Stevens Shipping and Terminaling Co., M. J. Hogan Co., and the *Antilla Bay* to cease doing business with each other.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, SOUTH ATLANTIC AND GULF COAST DISTRICT, AFL-CIO

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1414, AFL-CIO

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT induce or encourage individuals employed by Marine Port Terminals, Inc., or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to process, transport, load, unload, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where the object thereof is to require Marine Port Terminals Inc., Occidental Chemical Company, Royster Co., the *Rosedale*, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force Occidental Chemical Company, Marine Port Terminals, Inc., Royster Co., and the *Rosedale* to cease doing business with each other.

WE WILL NOT threaten, coerce, or restrain Occidental Chemical Company, Marine Port Terminals, Inc., Royster Co., or the *Rosedale*, or any other persons engaged in commerce or in an industry affecting commerce, where the object thereof is to require the above-named persons, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force Occidental Chemical Company, Marine Port Terminals, Inc., Royster Co., and the *Rosedale* to cease doing business with each other.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, SOUTH ATLANTIC AND GULF COAST DISTRICT, AFL-CIO

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1423, AFL-CIO

DECISION

STATEMENT OF THE CASE

BERNARD RIES, Administrative Law Judge: This matter was heard in Savannah, Georgia, on September 4–5, 1980. It has two companion cases: *International Longshoremen's Association, AFL-CIO and Local 799, International Longshoremen's Association, AFL-CIO (Allied International, Inc.)*, 257 NLRB 1075 (1981), and *International Longshoremen's Association AFL-CIO (Kansas Farm Bureau, American Farm Bureau Federation, Texas Farm Bureau)*, Cases 23-CC-762-1,-4, 23-CC-763-1-4, and 23-CC-764-1-4, which were heard by me respectively, on August 27-28, 1980, in Boston, Massachusetts, and on October 27-28, 1980, in Houston, Texas.

International Longshoremen's Association, Local 1414, AFL-CIO (herein Respondent Local 1414); International Longshoremen's Association, South Atlantic and Gulf Coast District, AFL-CIO[1] (herein Representative District); International Longshoremen's Association, Local 1423, AFL-CIO (herein Respondent Local 1423); and International Longshoremen's Association, AFL-CIO (Representative ILA) are labor organizations within the meaning of the Act.

Occidental Chemical Company (herein the Charging Party) is an employer within the meaning of the Act.

The complaints in the three cases have a common theme—that Respondent International and various of its locals violated Section 8(b)(4)(i) and (ii)(B) of the Act by announcing and implementing a boycott of Russian ships and cargo in the early part of 1980. Separate hearings were conducted, however, with the Charging Parties in each case confining their participation to the proceeding to which their charges had given rise. No motion having been made that the cases be consolidated for purposes of decision,[2] and since each of the Charging Parties has played a role in only the case of particular interest to it, I shall issue separate decisions in each case. Because of the commonality of certain facts and issues in the three cases, reference will be made occasionally to arguments and circumstances in cases other than the present one.

Briefs were received from the parties in all three cases on or about January 9, 1981. On the basis of the record[3]

[1] I have, *sua sponte*, amended the caption to conform to the correct name of Respondent District.

[2] Prior to the hearings, Respondents had moved that the three complaints be consolidated for hearing. Oppositions filed by the General Counsel and all the Charging Parties led the Associate Chief Administrative Law Judge to deny the motion.

[3] Certain errors in the transcript are hereby noted and corrected.

made at the hearing, my recollection of the demeanor of the witnesses, and the briefs, I make the following findings of fact, conclusions of law, and recommendation.

I. THE ISSUES

On January 9, 1980,[4] 2 weeks after the invasion of Afghanistan by the army of the Union of Soviet Socialist Republics, Respondent International President Thomas W. Gleason made the following public statement:

> In response to overwhelming demands by the rank and file members of the Union, the leadership of ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed.
>
> This order is effective across the board on all vessels and all cargoes. Grain and other foods as well as high valued general freight. However, any Russian ship now in process of loading or discharging at a waterfront will be worked until completion.
>
> The reason for this action should be apparent in light of international events that have affected relations between the U.S. and Soviet Union.
>
> However, the decision by the Union leadership was made necessary by the demands of the workers.
>
> It is their will to refuse to work Russian vessels and Russian cargoes under present conditions in the world.
>
> People are upset and they refuse to continue the business as usual policy as long as the Russians insist on being international bully boys. It is a decision in which the Union leadership concurs.

On January 10, J. H. Raspberry, the president of Respondent ILA South Atlantic & Gulf Coast District, located in Galveston, Texas, sent to all ILA locals under his jurisdiction, including Respondent Locals 1414 in Savannah, Georgia, and 1423 in Brunswick, Georgia, a telegram containing the body of President Gleason's statement with the appended notation from Raspberry that, "I concur with President Gleason's position and advise you to act accordingly." Thereafter, according to the complaint, the presidents of Locals 1414 and 1423 informed Charging Party Occidental and other businesses associated with Occidental that they would refuse to refer, or would not permit, longshoremen to unload moor certain vessels arriving in the ports of Savannah and Brunswick from the USSR. The conclusion of the complaint is that by virtue of the press release issued by President Gleason, the confirming telegram sent by District President Raspberry, and the conduct of the two local presidents, Respondent have induced and encouraged individuals employed by or to be employed by secondary employers[5] to engage in strikes or refusals to handle goods or commodities, and have thereby threatened, coerced, and restrained certain secondary employers with an object of forcing the secondary employers to cease handling the products of, or doing business with, Occidental or any other person, and of forcing Occidental to cease doing business with the USSR, or with owners of vessels carrying products from the USSR, or with other persons, all in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.[6]

> It shall be an unfair labor practice for a labor organization or its agents . . . (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is: . . . (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing . . . .

II. FINDINGS OF FACT

Pursuant to a long-term trade agreement with the USSR, Occidental, a Delaware corporation, imports urea, potash, and anhydrous ammonia from that nation. Occidental charters ships for the importation of these products, and they customarily discharge ammonia in the port of Savannah and potash in the port of Brunswick. In the former port, Occidental employs the services of Stevens Shipping and Terminaling Co., a Georgia corporation, to act as the ship's agent for receiving ammonia.

Stevens, in turn, employs M. J. Hogan Co., a Georgia corporation, to moor the ships to the dock. Stevens also deals with Atlantic Towing, not specifically named in this case, to provide tugboat service. Both Stevens and Hogan are parties to collective-bargaining agreements with Local 1414. The bargaining agreements establish a hiring hall system. Hogan, however, has been assigned a regular crew of four longshoremen and one relief man by the hiring hall, so he does not routinely use the services of that institution unless he needs extra linesmen.

In the second week of February 1980, about 1 month after President Gleason's order was issued, two vessels carrying cargo of Russian origin for Occidental were scheduled to arrive in Savannah and Brunswick. The *Antilla Bay*, a foreign-flag ship,[7] probably registered in the

[4] All dates hereafter refer to 1980.

[5] The General Counsel takes the position that Occidental is a neutral employer, thus disavowing the alternative argument advanced by Occidental that it is an employer with which Respondents have a "primary" dispute.

[6] The cited provisions state, in relevant part:

[7] William Vance, an Occidental manager, at first testified that the vessel was foreign-owned as well; subsequently, he said that he "believe[d] it was an Occidental vessel," but then again, that he thought it was "chartered by Occidental."

Netherlands Antilles, was due to arrive in Savannah on February 12 with ammonia. Occidental official William Vance had been told by the deputy director of the Georgia Port Authority that the Authority would not allow Occidental to bring any vessel carrying Russian cargo into Savannah without the "complete agreement" of the ILA and other unions,[8] and had further been told by a manager of Stevens that Local 1414 would not handle the ship. Vance decided to speak to Reverend Elijah Jackson, the president of that Local. When Vance called Jackson on February 4, Jackson confirmed that the report was correct that the Local "would not handle the Antilla Bay when it arrived in Savannah with its cargo from the Soviet Union." Jackson further told Vance that "this was the position of the nation—of the Union nationwide. Until they received guidance different from that, he was going to proceed not to handle vessels."[9]

The *Antilla Bay* was, accordingly, diverted from Savannah to a western United States port.

In discharging a cargo of ammonia in Savannah, an automated process is used, and the only shore employees needed are those required by Hogan to moor the ship to the dock. The normal crew used by Hogan for an ammonia ship consists of six rank-and-file longshoremen referred by the ILA and two Hogan supervisors. Hogan does not have enough supervisors to do the work by a wholly supervisory staff. Hogan credibly testified that on no occasion has he used a crew which included non-ILA-referred pickup labor.

At some point after Gleason's order came down, Hogan, at the behest of a stevedoring company called TTT, asked Local Vice President Dunham about the possibility of unloading a Russian ship. At the hearing, the two men agreed that Dunham had told Hogan that, if he wished, he could tie up a Russian ship using supervisors. From Hogan's testimony, it appears that the *Antilla Bay* was not the subject under discussion. It also appears that Hogan and his three supervisors are an insufficient work force for tying up an ammonia ship, that Hogan relied on Local 1414 to supply his needs, and that Hogan was not about to "cause any problems with the ILA due to any kind of scab labor no, sir."

The *Rosedale*, a foreign-flag vessel chartered by Occidental, perhaps British-owned and perhaps under Liberian registery, was expected to arrive in Brunswick on February 8 with a load of Russian potash purchased by Occidental. On February 1, Occidental asked Royster Co., a Virginia corporation which oversaw for Occidental the receipt of such cargo, and Marine Port Terminals, Inc., a Georgia corporation which provided stevedoring services for Royster at Brunswick, to make ready for the *Rosedale*, which required 15–20 longshoremen to moor and unload. When John Stubbs, president of Marine, notified Occidental that President Thomas Holland of Respondent Local 1423 had said that he would not furnish longshoremen for the *Rosedale*, Occidental official John Harold set up a meeting with Holland. At the meeting on February 11, at which were present Holland, Stubbs, Harold, and others, Holland was asked whether Local 1423 would provide labor for the *Rosedale*.[10] He answered that his portion was not changed, that the Local was following the position taken by the International Union, and that "unless he had instructions from his superiors, he was not going to work the cargo."[11]

The *Rosedale* remained at anchor off the Port of Brunswick until March 9, when, pursuant to an injunction issued by the U.S. District Court in Savannah, Local 1423 referred longshoremen to discharge the cargo.

A few other matters warrant comment. Respondents attempted to show here that Hogan, in Savannah, and Marine, in Brunswick, might have obtained non-ILA labor; i.e., nonmembers dispatched from the hiring hall or hired off the street. To the extent that the issue may be relevant, I cannot say with certainty that had Hogan and Marine pressed the point, they would not have been able to recruit such labor, but I am inclined to doubt it. They made no effort to do so, I assume, not only because they did not wish to offend ILA, but also because the *in terrorem* effect of President Gleason's directive made it quite conceivable that a ship could come into port and, as the Georgia Port Authority saw it, not make its way back out. Because the Port Authority would not let Occidental bring the ships into port while this Damoclean sword was suspended, it was understandable that Occidental would not have urged Hogan and Marine to find some non-ILA men to do the jobs.

As noted in the other decisions issued concurrently herewith, Respondents' effort to characterize President Gleason's January 9 statement as something less than an "order" is crippled by the fact that Gleason used that word twice in his pronouncement. It seems clear that

[8] According to Vance, the Port Authority did not want to permit any ship to be berthed at a Georgia port without assurance that the relevant unions would allow their members to remove the ship.

[9] Jackson, not a particularly inspiring witness, gave testimony indicating that he probably did make the statements which Vance attributed to him. Although Jackson said at the hearing that some of his members had told him prior to receipt of the Raspberry telegram that they did not want to work Russian ships, his testimony on this point was quite sketchy. His testimony that "[w]hatever we do, we're not going to do anything that we feel out of proportion with the ILA"—that is, that he desired to take "the same position as the rest of the Union"—and that he received the Raspberry telegram as "some kind of formal guideline of our Local," clearly suggests, despite Jackson's boxing around on this subject, that he communicated to Vance and to whomever else asked that he was not going to permit his members to work as long as the Gleason directive was in effect. Whether or not as Jackson and Vice President Chester Dunham, Local 1414 testified, the Rasberry telegram was read at a union meeting and three shapeups to a majority of the nearly 800 members, and to their cheers, is irrelevant. It seems apparent to me that Jackson believed that he was under an internal union constraint and acted accordingly.

[10] On brief, the General Counsel and Respondents stipulate that the Brunswick bargaining agreement is identical in its terms to the Savannah agreement received in evidence as Resp. Exh. 1. The record shows that Marine is party to the Local 1423 agreement at Brunswick, and that, as a matter of practice and custom, Marine obtained its longshoremen only from Local 1423.

[11] Holland testified that he did not tell the others that he was following the policies of the International but merely "told them my position had not changed," explaining that "my" referred to "Local 1423, officers and members." Yet Holland did concede, however, although he later appeared to retract, that when Stubbs had earlier called him to ask about unloading Russian cargo from the *Rosedale*, he had indicated that he would be unable to furnish men for that purpose; he further recalled that Harold had asked him at the meeting the name of his Supervisors, which indicates that Holland had indeed, as Harold testified, made reference to instructions of his superiors. I credit Harold, a very impressive witness, on this point.

Gleason intended, and his subordinates understood, the boycott to be a binding stricture on union members.

The related argument by Respondents—that the order was simply an expression of the will of the membership—is not supported by the evidence. Gleason did not appear in any of these related hearings to give testimony that his order was the inexorable result of an outpouring of sentiment by the members of the Union. The testimony presented here by the Local officers about the expressions of dissatisfaction they had heard from the rank and file prior to Gleason's statement, and about the ecstatic sounds emitted by the membership after Raspberry's telegram was read to them at meetings and shapeups, scarcely suffices to demonstrate that Gleason was acting as nothing more than a passive conduit for a unanimous and committed constituency.

Conclusions

In *International Longshoremen's Association, AFL-CIO and Local 799, International Longshoremen's Association, AFL-CIO (Allied International, Inc.)*, Case 1-CC-1753, issued this day, I reach the conclusion that the three 8(b)(4) complaint proceedings heard by me should be dismissed for want of jurisdiction. No useful end would served by duplicating here the lengthy legal analysis undertaken in that case, and it is incorporated by reference.

As in that decision, I believe that I have made here all factual findings which might possibly be relevant to a different result, should some higher authority conclude that I have erred on the jurisdictional issue.

Conclusions of Law

1. Respondents are labor organizations within the meaning of Section 2(5) of the Act.

2. The activities complained of herein are not in "commerce" within the meaning of the Act, and the complaint must therefore be dismissed for want of jurisdiction.

[Recommended Order for dismissal omitted from publication.]